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Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

SAVE-A-PATRIOT FELLOWSHIP
AND JOHN B. KOTMAIR, JR.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States District Court for Maryland issued a permanent injunction against unincorporated association Save-A-Patriot Fellowship and its fiduciary John B. Kotmair, Jr. under the provisions of Internal Revenue Code §§7402(a) and 7408. The Fourth Circuit Court of Appeals affirmed for the "reasons stated by the district court." Questions presented are:

1. Whether the District Court for Maryland has jurisdiction under §§ 7402(a) and 7408 of the Internal Revenue Code to enjoin the advocacy or sale of politically dissenting opinions concerning the meaning and interpretation of the tax laws.

2. Whether the District Court for Maryland's order to produce a list of a political association's members to the government, where such production is unrelated to preventing Petitioners' misconduct, violates the First Amendment.

3. Whether the Fifth Amendment's guarantee of due process requires the District Court to comply with the specificity of terms required under the Federal Rule of Civil Procedure 65(d) when issuing an injunction under the authority of §§ 7402(a) and 7408 of the Internal Revenue Code.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Save-A-Patriot Fellowship (SAPF) and John B. Kotmair, Jr. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The unpublished per curiam opinion of the Court of Appeals is reported at 234 Fed.Appx. 65 (App. 2). The order denying petitioners' petitions for rehearing en banc is unreported (App. 1). The opinion of the U.S. District Court for the District of Maryland is reported at 2006 WL 4846388 (App. 4). The permanent injunction order of the District Court is unreported (App. 28).

JURISDICTION

The opinion of the Fourth Circuit Court of Appeals was filed on July 26, 2007. The order denying the petitions for rehearing en banc was filed on October 1, 2007. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The constitutional, statutory, and regulatory provisions involved are set forth in the Appendix. They

are: the First and Fifth Amendments (App. 43), 26 U.S.C. §§ 6700, 6701, 7402(a), and 7408 (App. 44•49), and Federal Rules of Civil Procedure 65(d) (App. 50).

STATEMENT

This action arises from the District Court's grant of an injunction against an unincorporated association advocating dissenting political opinions with regard to the interpretation of the tax laws of the United States. Under the authority granted by 26 U.S.C. § 7408,[1] the District Court held that the actions and speech of SAPF can be enjoined because they violate §6700 and § 6700, which penalize commercial speech related to abusive tax shelters and aiding and abetting understatements of liability, respectively. The Court also held that §7402(a) gave it general authority to enjoin the bulk of SAPF political advocacy under the theory that such advocacy interfered with and caused irreparable harm to the IRS.

1. Petitioner SAPF is a 23-year-old unincorporated association founded by its current fiduciary Kotmair. *Save-A-Patriot Fellowship v. U.S.*, 962 F. Supp 695 (1996). Members join SAPF in order to more effectively advocate their dissenting views, and to assist each other in exercising their constitutional and due process rights. SAPF describes itself in its mission statement:

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[1] All references to statutory sections refer to sections of Title 26, the Internal Revenue Code, unless otherwise indicated.

> The S.A.P. Fellowship is a 1st Amendment association dedicated to seeing that the IRS and other government personnel obey the law. Our association recognizes the necessity of taxation ... but we also recognize that this necessity has provisions in the law, and the government, in meeting its exigencies, may not extend its activities beyond the law.
>
> The Fellowship actively promotes the study of the law and the assertion of one's rights in accordance with the law. It does not "protest" or "object" to any tax, income or otherwise, and is NOT a "tax protest" organization.
>
> ... Fellowship members believe that many [IRS] employees routinely misapply and illegally enforce the provisions of the law and that the public must find a way to hold them within the law. To that end the Fellowship educates the public, shows in its publications what the law actually says, and attempts to clarify the limitations of various tax laws as was intended by Congress. The Fellowship does not advocate or condone unlawful resistance, protest, or other like actions.

The dissenting political message advocated by SAPF and at odds with numerous federal court decisions is that Congress did not enact the income tax laws to tax American citizens. App. 16. Without question, this message is not a popular one. SAPF has distributed this political message through the sale of *Just The Facts*, a 12-hour video seminar on the tax laws, *Piercing the Illusion*, a book written by John Kotmair, newsletters, and various other publications and audio and video presentations.

2. The District Court for Maryland granted Respondent, the United States of America ("the government"), an injunction under IRC §§7402(a) and 7408 upon summary judgment motion, despite numerous procedural objections and genuine issues of disputed fact. The injunction is vague and overbroad in its terms, enjoining such activities as assisting persons with correspondence to the IRS, assisting persons with court filings related to taxes, and even distributing newsletters, books, manuals and videotapes or engaging in "similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws." App. 28–32).

3. Petitioners filed timely motions for new trial and for modification of the injunction, arguing that the opinion and order were not specific in terms as mandated by Federal Rule of Civil Procedure 65(d) and that summary judgment was not warranted in light of the disputed issues of material fact. Both motions were denied. App. 33.

4. Petitioners filed a timely appeal in the Fourth Circuit on the grounds which give rise to the questions for review in this Court: (1) that the injunction lacked the specificity required by Federal Rule of Civil Procedure 65(d); (2) that the jurisdictional statutes invoked did not establish the subject matter jurisdiction necessary to effect an injunction against SAPF's activities and speech; and (3) that the order to provide the private personal information of Save-A-Patriot Fellowship members violates the First Amendment rights of freedom of association and privacy in such associations. The Fourth

Circuit affirmed the issuance of the injunction, "for the reasons stated by the district court." (234 Fed. Appx. 65, at **1) Petitioners filed timely petitions for rehearing *en banc*, which were subsequently denied on October 1, 2007.

5. In its decision, the District Court acknowledged that to "prove a violation of § 6700 that would then warrant the issuance of an injunction under §7408," the government had to prove that:

> (1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; ...(2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; ... *Estate Preservation*, 202 F.3d at 1098. App. 12.

Having determined that the false statements subject to penalty must concern the tax benefits to be derived from the entity, plan, or arrangement, the District Court proceeded to identify statements it described only as "falsehoods about the tax laws" (App. 14. FN6) as violative of § 6700.:

> ... SAPF represented, *inter alia*: that taxable income is limited to "income that has been 'earned' while living and working in certain 'foreign' countries or in the U.S. possessions and territories;" that there is no requirement for most Americans to file tax returns or have taxes withheld from their wages; and that one can "quit" the Social Security program. App.

16.

The District Court did *not* find these statements were made concerning any tax benefits said to result from participation in a plan or arrangement, but rather statements made "to encourage individuals to join its 'Fellowship,' and make use of its products and services." It was noted by the District Court that "Defendants readily acknowledge that courts have consistently rejected the truth of each of these propositions [about the tax laws] ... they simply choose to reject and ignore those holdings." App. 16.

In response to SAPF's argument that all the statements complained of by the government were in fact dissenting opinions it holds about the operations of the tax laws — as acknowledged by the District Court, *supra* — and not statements made concerning tax benefits of SAPF membership, products, or services, the District Court substituted an element of its own design: an *unstated* implication, derived, in the Court's view, from the sales of "forms, letters, and 'paralegal' services," that "only those that follow SAPF's plan will be able to reap those benefits [potentially available to any American citizen]." App. 15.

On appeal, SAPF argued the failure of the District Court to identify even one statement which met the §6700 requirement — that such statement (s) be "false" only with regard to "tax benefits to be derived from the entity, plan or arrangement" -- rendered the summary judgment erroneous. SAPF further argued that the statements identified by the

District Court did not violate the elements established by Congress in the plain words of §6700, and hence were beyond the jurisdiction of the District Court to enjoin.

Petitioners informed the Fourth Circuit that consideration of this element of § 6700 was raised for the first time in the Federal Circuits, and that an important question existed as to the scope of injunctions reached without consideration of this element. The Fourth Circuit failed to construe the statute or make any conclusion of law.

6. In its decision, the District Court acknowledged that "to establish a violation of § 6701 warranting an injunction under § 7408," the government must prove:

> (1) the defendant prepares, assists in, procures, or advises the preparation of any portion of a return, affidavit, claim, or other document; [and that] (3) the defendant knows that such portion [if used in connection with any material matter arising under the internal revenue laws] would result in an understatement of the liability for tax of another person .... App. 18.

Having acknowledged that the underlying crime aided and abetted by a § 6701 violation is an "understatement of the liability for tax," the District Court identified that crime as cognizable "by ... simply refus[ing] to file a return." App. 19. The District Court held this crime was aided and abetted by Petitioners' "prepar[ing] correspondence for its members that it knows will be used (and in fact, has

been used) in connection with matters material to the internal revenue laws." App. 18. The Court identified the letters as "protest letters" (App. 17) and described the manner in which they were employed:

> When the IRS sends notices to SAPF members exposing the frivolousness of the "U.S.–Sources" argument and requesting that they file properly completed income tax returns, SAPF...submits to the IRS on behalf of its members a number of different formletter responses. ... Kotmair, without denying SAPF sends the letters, simply affirms that "[t]he documents in question contain true statements from the law." App. 6.

On appeal, SAPF argued that the underlying crime which must be aided and abetted to invoke the jurisdiction of § 6701— the "understatement of liability" — is *not* the crime of failure to file defined and penalized under §7203, but is instead the crime penalized under section § 6662, specifically defined as involving cases where a return is filed. Since the District Court made no finding that any SAPF member (or customer) had been aided or abetted in the commission of a crime involving the filing of a return, SAPF argued that the essential element necessary to find a violation of this aiding and abetting statute was missing.

Petitioners informed the Fourth Circuit that consideration of this element of § 6701 in the absence of return preparation was raised for the first time in the Federal Circuits, and that an important ques-

tion existed as to the scope of injunctions reached without consideration of this element. The Fourth Circuit failed to construe the statute or address the issue in its opinion.

7. The District Court held it had jurisdiction under § 7402 (App. 20) to order Petitioners to produce lists to the United States of two categories of individuals: (1) SAPF members, whether full or associate, and (2) customers who purchased SAPF products and services. App. 31. In spite of the government's admission that it already knew many of the individuals for whom Mr. Kotmair had written to the IRS, the Court determined that this list was needed because of a "possibility" that many do not file returns, and concluded that such injunctive relief was "an appropriate means to alleviate some of the harm caused by Defendants' conduct and to mitigate further harm." App. 24.

On appeal, Petitioners argued that SAPF's status as a membership organization espousing political views was already established in *Kotmair v. United States*, *supra,* and submitted that this order would chill the First Amendment right to freedom of association and threatened the destruction of the organization altogether. The Fourth Circuit failed to apply the strict scrutiny necessary to prevent infringement of this First Amendment protection.

8. The District Court granted a stay pending appeal, recognizing "the potential immediate impact from enforcement of the injunction on Defendants outweighs the harm to Plaintiff occasioned by a brief delay in enforcement," and that "As to the pre-

cise permissible scope of the injunctive relief, ... there are issues raised that are sufficiently 'serious, substantial, difficult and doubtful, as to make them fair ground for litigation.'" App. 37.

Although the District Court recognized that fundamental rights may be infringed upon by the broad scope of the injunction granted, the Fourth Circuit declined to address the issues surrounding the permissible scope of injunctive relief upon appeal.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit has affirmed the issuance of an injunction employing such broad and general language it cannot be reconciled with the requirements of F.R.C.P 65(d), nor with the standards of due process (including prior notice) established by this Court. Unlike cases decided in the federal circuits before, where the courts of appeals narrowed the prohibitions to conform with the protections of the First Amendment failed to provide the necessary specificity or any narrowing interpretation of the injunction. This Court's supervisory control is needed to protect Petitioners from the irreparable harm of being forced to curtail all First-Amendment protected activity to avoid inadvertent contempt charges.

The injunction also conflicts with the holdings of this Court by forcing Petitioners to provide the private personal information about its members, violating the right to freedom and privacy in associating with others to advocate their political beliefs. This case is ripe for review on this issue because Pe-

titioner SAPF, unlike the prior cases brought under §6700, is a *bona fide* unincorporated political association engaged in political advocacy.

Finally, the injunction restrains Petitioners from expressing their political beliefs by mischaracterizing such beliefs as "false commercial speech." This case presents a good forum to decide this important federal question because the Courts below utterly failed to particularize how any of Petitioners' speech falls into the category of commercial speech so as to be subject to prohibition.

This Court has developed a substantial body of law regarding the protection afforded by the First Amendment to commercial speech. This body of law was developed within the context of laws and regulations which laid restraints upon commercial speech. In recent years, the federal circuits have begun to develop a body of law with respect to the protection afforded by the First Amendment to commercial speech which is at odds with the decisions of this Court, and this Court's review is needed to prevent the inferior courts from overreaching.

Political speech, receiving core First Amendment protection, is subject only to legislative restrictions tailored to serve an overriding state interest. See, *e. g., McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 347 (1995). Restrictions on commercial speech are subject to the intermediate scrutiny set forth by *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). The advertisement of illegal activity receives no First Amendment protection at all. See, *e.g., Pitts-*

burgh Press. Co., 413 U.S. 376, at 388 (1973). These varying levels of protection have rendered the *label* the federal courts give speech paramount in determining the level of protection such speech is afforded. With the rise of recent case law in the Circuits respecting § 6700 and § 6701 — see, *e.g., U.S. v. Schiff,* 379 F.3d 621(9th Cir., 2004), *U.S. v. Bell,* 414 F.3d 474 (3rd Cir. 2005) — it has become apparent that the manipulation of these labels to enjoin speech disfavored by the IRS threatens to deprive political dissent regarding the income tax laws of the protections of the First Amendment. This Court's guidance is needed to reset the standards both for the penalty statute construction and misuse of commercial speech doctrine divorced from underlying legislation.

I. THE DECISION BELOW ENLARGES THE SCOPE OF THE INJUNCTION AUTHORITY GRANTED BY THE INTERNAL REVENUE CODE.

A. Scope of injunction authority under 26 USC §7408 is limited by penalty statutes involved.

IRC §7408 confers jurisdiction upon a District Court to enjoin "engaging in such conduct or in any other activity ... (1) subject to penalty under section 6700, 6701 ||." App. 49. Since only activities "subject to penalty" can be enjoined, the court's first duty must necessarily be to determine the precise activities subject to penalty under §§ 6700 and 6701.

This Court has repeatedly affirmed that penalty statutes are to be strictly construed against the government:

> The law is settled that 'penal statutes are to be construed strictly,' *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284, 296, and that one 'is not to be subject to a penalty unless the words of the statute plainly impose it,' *Keppel v. Tiffin Savings Bank*, 197 U.S. 356, 362. *Commissioner of Internal Revenue v. Acker*, 361 U.S. 87, 91 (1959). (internal citations omitted)

In order to construe penalty statutes, courts are to take every word of the statute under consideration. "No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that 'significance and effect shall, if possible, be accorded to every word.'" *Petition of Public National Bank*, 278 U.S. 101, 104 (1928).

The District Court, quoting *U.S. v. Buttorf*, 761 F.2d 1056, noted that when an injunction is explicitly authorized by statute, proper discretion requires its issue if the "prerequisites for the remedy have been demonstrated." App. 12. The prerequisites are, according to § 7408, that "the person has engaged in any conduct subject to penalty" under §§ 6700 or 6701. App. 11. While the District Court acknowledged all the elements of such conduct, see *supra*, the element of a statement made concerning the tax benefits to be derived from participation in a plan or arrangement was missing from its findings. Thus, although the Court found several statements, its failure to test those statements against the statutory elements required to be proved allowed the government to evade its burden of "proving each

element necessary for the issuance of an injunction by a preponderance of the evidence." (citing *United States v. Estate Preservation Services*, 202, F. 3d 1093, 1098 (9th Cir. 2000). App. 12.

In affirming the District Court, the Fourth Circuit deviated from this cardinal rule in rendering judgment, which in turn led to a failure to strictly construe the statutes against the government, and ultimately resulted in an injunction which lies outside the jurisdiction of the statutes invoked, and consequently, in determining the scope of an injunction which can issue under § 7408.

B. Failure to strictly construe 26 USC § 6700 sets the federal circuits in conflict with this Court's commercial speech jurisdiction.

This Court first offered a clear and narrow definition of commercial speech in *Pittsburgh Press Company v. Pittsburgh Commission on Human Relations,* 413 U.S. 376, at 385 (1973) as that speech which "propose[s] a commercial transaction." Since then, this Court has expanded upon that definition to hold that commercial speech is also "expression related solely to the economic interest of the speaker and its audience." *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561 (1980). In *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983), at 67, the Court acknowledged three characteristics which defined commercial speech: it is a type of advertisement; it refers to a specific product, and the speaker must have an economic motive for the expression.

This Court's body of law regarding commercial speech, however, has been in the main built from challenges to enacted statutes which specifically restrict some form of advertisement. See *e.g., Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council,* 425 U.S. 748 (1976), (challenge of Virginia statute declaring it unprofessional conduct for licensed pharmacist to advertise prices of prescription drugs); *Breard v. City of Alexandria, La.*, 341 U.S. 622 (1951) (appeal of conviction of city ordinance regulating solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise); *Valentine v. Chrestensen*, 316 U.S. 52 (1942) (action to enjoin enforcement of New York Sanitary Code section prohibiting distribution of handbills); *Bolger v. Youngs Drug Products Corp., supra* (challenge of federal statute prohibiting unsolicited mailing of contraceptive advertisements); *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) (challenge of Commission regulation which banned promotional advertising by the utility); *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940) (appeal of conviction of Connecticut statute prohibiting solicitation of money for alleged religious, charitable, or philanthropic causes without approval of Secretary of Public Welfare); See also *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002), *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980).

From such controversies, the thrust of First Amendment jurisprudence with regard to commercial speech is that it can be *prohibited by appropriate legislation* without violating the protections of

the First Amendment.

On the other hand, traditional First Amendment jurisprudence still recognizes that "the Constitution protects expression and association without regard ... to the truth, popularity, or social utility of the ideas and beliefs which are offered." *National Association for Advancement of Colored People v. Button*, 371 U.S. 415, 444 (1963). Political advocacy, including criticism of government, is still the core of the protections guaranteed by the First Amendment. As this Court noted in *Mills v. Alabama*, 384 U.S. 214 (1966), at 218:

> ... there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of ... structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

This point was amplified in *New York Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964):

> Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth — whether administered by judges, juries, or administrative officials — and especially one that puts the burden of proving truth on the speaker.

At least one key distinction between political speech and commercial speech, then, is that commercial

speech, if false, *can* be banned by appropriate legislation, while political speech, even if false, may *not* be banned.

This state of affairs is directly related to the instant petition. IRC §6700(a)(2)(A) does indeed deal with a narrow class of false commercial speech — i. e., "statement[s] with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to known is false or fraudulent as to any material matter." [emphasis added] App. 44. Further, such statements must be made in connection with the sale of an interest in the plan or arrangement as established at §6700(a)(1)(B). The strict construction against the government required in the case of penalty statutes, however, will not serve to extend subject matter jurisdiction from this narrow class of false commercial speech to other types of commercial speech, not even if they are labeled "false."

Since the legislative prohibition on commercial speech under § 6700 is limited to that narrow class identified above, Congress has seen to it that the prohibition, if properly construed and applied, would survive even the strict scrutiny applied to restrictions on political speech — that is, the statute is already narrowly tailored to serve an overriding state interest in suppressing the proliferation of abusive tax shelters.

Carried outside subject matter jurisdiction cre-

ated by a penalty statute which must be strictly construed, however, an injunction against "commercial speech regarding the tax laws" (App. 30, 31) stands, even on its face, as an offense not only against political speech, but against the body of commercial speech jurisprudence established by this Court. It is impossible for Petitioners to know what "commercial speech" constitutes with respect to the tax laws in general, since speech made about the tax laws *per se* fails all three tests suggested by *Bolger, supra*.

The District Court's finding represents the new departure from traditional commercial speech jurisprudence which has been developed over recent years in the federal circuits without the guidance of the Supreme Court. The *Schiff* and *Bell* cases, *supra*, cited by the District Court, represent this second body of commercial speech case law.

Unlike the case law discussed earlier, this second body does not arise from challenges to laws that explicitly restrict commercial speech, but from civil actions begun by the government under the IRC, ostensibly under §6700. In effect, however, this body has divorced the notion of "commercial speech" from any underlying legislative decree. Note the absence of any qualifications related to the narrow scope of §6700 in the passage from the District Court's ruling:

> Because much of the speech, however, relates to the sale of SAPF products and services, it is commercial speech, and it is well established that commercial speech, if fraudulent, can be

> enjoined. [citations omitted] Because Defendants' representations about the tax laws and the efficacy of their products is clearly fraudulent, that speech can be enjoined without running afoul of the First Amendment.

The advantage to the government of a new body of commercial speech law unmoored from any actual legislative or regulatory restrictions is clear. Once the government disagrees with the political views of persons such as Petitioners — that is, it holds the opinion that such views are false, but cannot prohibit them under traditional First Amendment jurisprudence, it simply relabels the offending speech "commercial," and enjoins it as such, quite apart from considering any particular demands placed upon it by the legislative decree.

"[R]elating to the sale of products and services" is not the same standard as "doing no more than proposing a commercial transaction." After all, how much of what kind of relation is enough to convert fully protected political speech into less protected commercial speech? Without some objective standard, the government would have virtually unlimited ability to enjoin any speech of which it disapproves. As in this case, political speech concerning the meaning, application and effects of the tax laws is one category of speech it continues to actively suppress.

Once unmoored from any statute which specifically restricts a class of speech, the doctrine of commercial speech established by this Court works to deprive Petitioners and all other persons labeled

"tax protestors" by the government of their right to hold, advocate and disseminate dissenting views regarding the operation and meaning of the internal revenue laws. The Court's intervention is urgently needed to set straight this abuse of the commercial speech doctrine, once again mooring it firmly to consideration of the underlying statutes at issue in a given case. If the Court does not address this important question, not only is the freedom of speech of an especially despised (by the government) group suppressed, the doctrine of commercial speech developed by this Court will be subverted by the new doctrine set loose by the federal circuits.

C. Failure to strictly construe 26 USC §6701 results in a novel legal theory departing from all federal circuit holdings.

The District Court departed from all former rulings in finding that the crime aided and abetted by a § 6701 violation, the "understatement of the liability for tax," was cognizable by a refusal to file a return. App. 19.

All the federal circuits have consistently applied the provisions of § 6701 where the factual element of advising on the preparation of returns, preparing documents to be used in returns, or preparing returns is present. See, e.g., *United States v. Bell*, 414 F.3d 474 (3rd Cir. 2005), *Abdo v. United States*, 234 F.Supp.2d 553 (M.D.N.C. 2002), Aff'd. 63 Fed.Appx. 163 (4th Cir. 2003). These decisions have been in keeping with the jurisdiction afforded by §6701, in that the underlying crime aided and abetted to invoke the penalty of § 6701— the "understatement of

liability of tax" — is a crime specifically penalized under section §6662(d):

> Sec. 6662. Imposition of accuracy-related penalty on underpayments
> (a) Imposition of penalty. If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.
> (b) Portion of underpayment to which section applies. This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:
> (1) Negligence or disregard of rules or regulations.
> (2) Any substantial understatement of income tax.
> (3) Any substantial valuation misstatement under chapter 1.
> (4) Any substantial overstatement of pension liabilities.
> (5) Any substantial estate or gift tax valuation understatement.
> ...
> (d) Substantial understatement of income tax
> (1) Substantial understatement
> (A) In general. For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of -
> (i) 10 percent of the tax required to be shown on the return for the taxable year, or

(ii) $5,000. ...
(2) Understatement
(A) In general. For purposes of paragraph (1), the term "understatement" means the excess of -
(i) the amount of the tax required to be shown on the return for the taxable year, over
(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).
[emphasis added]

The District Court held that the documents prepared by SAPF in violation of §6701 were "formletter responses" which Kotmair affirmed "contain true statements about the law." App. 6. These letters were recognized by the Court as responses to notices the IRS sent to SAPF members. In other words, the IRS initiated contact with the members, and the members wrote back to the IRS with the assistance of SAPF. App. 6.

While the Internal Revenue Code specifically penalizes filed returns which show "understatement of liability," Petitioners have been unable to identify any law which specifically penalizes the writing of letters in response to an IRS inquiry. Since IRS inquiries generally request a response, and these letters appear to constitute, according to the novel theory proposed by the District Court, aiding and abetting the crime of "refusal to file" — the question arises as to whether the individual SAPF member has any right to answer IRS inquiries with what the member considers "true statements about the law" in the face of governmental disagreement with his

position.

The right to petition is a fundamental right guaranteed by the First Amendment. If an individual commits no crime by writing a letter advocating his view and understanding on the meaning of the tax laws to a governmental agency, then any individual who assists him in the preparation of such letter cannot be held to aid and abet a crime.

In creating a novel construction of its own, the District Court disregarded the relevant case history correctly construing the provisions of §6701, and exceeded the scope of injunction authority conveyed by §7408. This overreach of judicial power infringes the petition rights of individuals to advocate opinions with which the courts or the IRS disagrees.

The District Court's dramatic departure from established statutory construction calls for this Court's supervisory control to re-establish the correct standards in light of likely harm to the petition rights of SAPF members and the public.

II. THE FOURTH CIRCUIT'S DISREGARD OF SUBJECT MATTER JURISDICTION RESULTED IN AN INJUNCTION ORDER WHICH CANNOT BE RECONCILED WITH THE FIRST AMENDMENT.

Subsection 7402(a), the only other statute cited by the government for jurisdictional purposes, authorizes only such injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." Any part of the injunction order issued in this case which does not fall within the

subject matter jurisdiction of one or the other of these two statutes is unauthorized. The "necessary or appropriate" language ties the subject matter jurisdiction of §7402(a) to some underlying internal revenue law to be enforced. Otherwise, there could be no basis for a review of the issuing court's finding that the order was indeed "necessary or appropriate." Without an underlying statute establishing the elements necessary to prove a violation thereof, it is impossible to make a determination that those elements exist.

While the District Court properly recognized that bankruptcy filings and Freedom of Information Act requests were outside the scope of §§7408 and 7402 (a), (App. 10), it failed to recognize the same lack of jurisdiction to enjoin other lawful activities of Petitioners.

Further, as the District Court noted, in order for an injunction to issue under the provisions of §7402 (a), the traditional equitable factors for granting injunctions must exist. These factors must exist for *each* element of the injunction arising from §7402 (a). In other words, the existence of harm from one activity does not and cannot extend the scope of the injunction to include activities which do not result in such harm. In the present case, the District Court found that "the government is sustaining irreparable harm in the form of the expenditures of time and money to respond to Defendants' frivolous filings as well as the lost revenue from SAPF customers who either fail to file returns or file returns understating their tax liability." [Emphasis added] (App. 21) Thus, of the harm found by the District

Court, the first relates only to "responding to Defendants' frivolous filings," and does not authorize enjoining anything else. The second harm is acknowledged to result from actions taken by persons other than Petitioners — persons who are *not* parties to this suit — and so does not authorize enjoining Petitioners from doing anything whatsoever.

Using harm adduced from one activity to justify enlarging the scope of an injunction to others cannot be reconciled with the protection afforded under the First Amendment to engage in the advocacy of political opinions, a protection this Court recognized in *New York Times Company v. Sullivan*, 376 U.S. 254, 269 (1964):

> [I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions,' and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.'" [internal citations omitted)]

It cannot be denied that "vigorous advocacy" includes, *inter alia*, writing letters to government agencies and government representatives, organizing community meetings, distributing public education materials, and communicating one's views in a variety of ways for the purpose of policy and social change: the very activities engaged in by Petitioners for over twenty years.

III. THE ORDER TO PRODUCE CUSTOMER AND MEMBER LISTS INFRINGES PRIVACY IN ASSOCIATION

A. The order is outside the scope of proper injunctive relief .

In affirming the District Court's order to produce detailed lists of all SAPF members, both full and associate, the Fourth Circuit's ruling that such production is an "appropriate means" to provide reparations for past harm conflicts with this Court's holding in *U.S. v. Oregon State Medical Society*, 343 U.S. 326, 333 (1952), that the:

> ... sole function of an action for injunction is to forestall future violations. It is so unrelated to punishment or reparations for those past that its pendency or decision does not prevent concurrent or later remedy for past violations by indictment or action for damages ... .

In *Belk v. Charlotte-Mecklenburg Board of Education*, 269 F.3d 305 (4th Cir., 2001), the Fourth Circuit also recognized that an injunction may not be used for punishment or reparations (*Id.*, at 347), but this same Circuit ignored its own precedents in upholding the forced disclosure of member information from Petitioners.

The Fourth Circuit's conflict with this Court's established precedents regarding the scope of injunctive relief is highlighted by a recent decision of the United States District Court for the Northern District of Illinois in a factually similar case: *United States of America v. William J. Benson*, case number 1:04-cv-07403. (N.D.Ill.) There, the District Court denied the government's prayer to order Benson to turn over a list of customers who had pur-

chased the "plan" he sold, reaching the opposite conclusion than the one made by the District Court for Maryland with respect to proper injunctive relief:

> The government has not shown that the request for the customer list is appropriate injunctive relief in light of the claims and allegations in this case ... Benson's customers ... violated no laws simply by purchasing the Reliance Defense Package or related package. Nor can it be assumed that Benson's customers did not pay their taxes merely because they purchased the [package] ... The customer list is not related to preventing future misconduct by Benson. ... The request by the Government for the customer list is beyond the scope of Benson's wrongdoing in the instant action ..." [emphasis added] App. 39–41.

That court has now addressed the issue of compelled disclosure of lists where purchasers of a tax "plan" were involved, and has disagreed with this Circuit that this is appropriate. While that case has not yet run its course, and may be reviewed by the Seventh Circuit, the threat of imminent harm to members and customers of SAPF, while customers of another "tax protestor" are *not* compelled to be disclosed, makes this a matter in need of urgent clarification by this Court, before such conflicting holdings result in a manifest, discriminatory injustice: some persons' right to privacy in purchasing and reading dissenting material upheld, while other persons' identical right is not.

B. An exacting scrutiny of compelled disclo-

sure is required to preserve privacy in freedom of association.

This Court has repeatedly held that:

> ... compelled disclosure [of membership lists], in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment,.*E.g., Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958). We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama*, we have required that the subordinating interests of the State must survive exacting scrutiny." *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). [some internal citations omitted]

In upholding the order for disclosure of the lists, the Fourth Circuit violated its own standard in *Marshall v. Stevens People and Friends for Freedom*, 669 F.2d 171 (4th Cir. 1981). "[C]ompelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association." *Id.*, at 176. This principle has been recognized by the other Circuits as well. See, *e. g.*, *Fifth Ave. Peace Parade Committee v. Gray*, 480 F.2d 326, 334 (2nd Cir., 1973); *Marshall v. Bramer*, 828 F.2d 355, 359 (6th Cir.,1987); *Andersen v. U.S.*, 298 F.3d 804, (9th Cir., 2002). In *U.S. v. Hammoud*,

381 F. 3d 316 (4th Cir. 2004), the Fourth Circuit further recognized that the right to freedom and privacy in one's associations exists even in the face of some unlawful activity of the group: "It is a violation of the First Amendment to punish an individual for mere membership in an organization that has legal and illegal goals" (emphasis added). Id., at 328.

To pass muster under the strict scrutiny demanded by *Buckley*, *supra*, the request for disclosure of members' and customers' identities must be closely related to a compelling governmental interest. In contrast to the District Court's determination that the list was needed because of a "possibility" that many do not file returns — hardly evocative of a compelling governmental interest — the District Court for Illinois concluded:

> The Government has not provided a compelling reason why Benson's customer list should be disclosed and the customers be investigated and scrutinized by the Government solely because they bought the Reliance Defense Package or related package. *U.S. v. Benson*, *supra*, App. 40.

The ruling of the Fourth Circuit has now accomplished what it said only three years ago in *Hammound*, *supra*, would violate the right to freedom of association, by stripping all SAPF members of privacy in association, without a showing of any individual intent to further "illegal aims."

This Court should vacate and remand this stifling

of personal liberties based on 'guilt by association.'

As the court in *Benson* stated, "Nor should Benson's customers, who the Government itself depicts as victims, be branded as potential co-conspirators with Benson and tax cheats solely because they bought the Reliance Defense Package or related package." *U.S. v. Benson, supra*, App. 41. Similarly, subjecting SAPF members to investigations, audits, and other types of governmental scrutiny merely because they have joined in advocating SAPF's political message, is the epitome of the dangers recognized by the Supreme Court in *Buckley, supra*.

The decision below established no connection between any SAPF members and any enjoined activity, and so requiring the disclosure of their private personal information, and subjecting them to harassment solely for being SAPF members, is certain to chill the exercise of rights to speech and association by dissuading members from renewing their membership, and non-members from joining the Fellowship in the first place.

The District Court's demand that the names of purchasers of Petitioners' books and other materials is also similar to the situation in *U.S. v. Rumely*, 345 U.S. 41 (1953), where a Congressional committee was trying to force a publisher to disclose the names of those who bought his materials. Like Rumely, Petitioners here "bid[] for the minds of men in the market place of ideas. The aim of the historic struggle for a free press was 'to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their

government.' *Grosjean v. American Press Co.*, 297 U.S. 233, 247, 56 S.Ct. 444, 448, 80 L.Ed. 660. That is the tradition behind the First Amendment. Censorship or previous restraint is banned." *Rumely, ibid.*, at 56 (concurring opinion of Justice Douglas).

Justice Douglas went on to explain the process by which disclosure ultimately infringes on the right to free speech and free thought:

> [The First Amendment] expresses the confidence that the safety of society depends on the tolerance of government for hostile as well as friendly criticism, that in a community where men's minds are free, there must be room for the unorthodox as well as the orthodox views. ... A requirement that a publisher disclose the identity of those who buy his books, pamphlets, or papers is indeed the beginning of surveillance of the press. ... Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular what the powers-that-be dislike. ... The books and pamphlets that ...preach an unpopular policy in domestic or foreign affairs, that are in disrepute in the orthodox school of thought will be suspect and subject to investigation. The press and

its readers will pay a heavy price in harassment. ... fear will take the place of freedom in the libraries, bookstores, and homes of the land. Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law. *Rumely, supra,* at 57 (concurring opinion of Justice Douglas).

IV. THE FOURTH CIRCUIT'S DISREGARD OF FRCP 65(D) THREATENS DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS

FRCP Rule 65(d) requires every order granting an injunction to "(A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail — and not by referring to the complaint or other document — the act or acts restrained or required."

In *Schmidt v. Lessard*, 414 U.S. 473, at 476 (1974), this Court held that the specificity provisions of Rule 65(d) are no mere technical requirements; rather, "[t]he Rule was designed to prevent uncertainty and confusion on the part of those faced with injunction orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. [internal citations omitted] Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." This Court also recognized a second purpose for the rule, that "[i]n the absence of specific injunctive relief, informed

and intelligent appellate review is greatly complicated, if not made impossible." *Id.* at 477.

The injunction against Petitioners employs vague generalities to describe the forbidden conduct, with the end result that Petitioners have no objective standard by which to gauge compliance. One of the most glaring examples of this is ¶1k of the order, which prohibits Petitioners from: "Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to aid or abet others in violating the internal revenue code." [Emphasis added] App. 34.

As explained *supra*, SAPF distributes its political message by way of books, newsletters, and audio and video presentations. The vagueness of the passage quoted above leaves Petitioners uncertain whether or not they have been prohibited from selling any of these materials, since to their knowledge and belief, none of the materials contain "false commercial speech regarding the internal revenue laws." Notwithstanding, since there are no other materials in which the enjoined category of speech might possibly be found, Petitioners are aware that continuing to sell their materials could be considered by the government to be a violation of the injunction.

This is a far cry from the "explicit notice of precisely what conduct is outlawed" required by *Schmidt*, *supra*, and Rule 65(d). If the District Court has determined that some portion of SAPF's materials are prohibited, then Rule 65(d) requires it

to inform Petitioners of exactly which portions have been so banned. In making this decision, the District Court had only a small sample of the materials SAPF makes available — *e.g.*, one page of the 350-page *Piercing the Illusion*, newsletters originally published in 1998 and 1999 (but none from the years since), and not one minute of the video *Just The Facts* — even though all of these materials had been provided to the United States in discovery.

In light of the dearth of SAPF publications before it, the District Court made an unjustifiable finding that "much" of the unseen materials contained offending speech. App. 22. Because it had no materials to review, it was impossible for the Court to cite the speech to be prohibited with the particularity required by Rule 65(d). When Petitioners applied to the District Court for modification of the injunction pursuant to Rule 65(d), the District Court brushed off Petitioners' plea to inform them of the exact speech enjoined with the words, "Defendants' confusion is self-induced." App. 34.

Petitioners now find themselves between the horns of a dilemma. Either they must cease sales of all SAPF materials, depriving them of their right to dissenting political speech, but ensuring that contempt proceedings cannot be brought, or they must guess at what is meant by the phrase "false commercial speech regarding the internal revenue laws" (App. 30, ¶k), and pay the price of contempt convictions for guessing wrong.

This problem is compounded by this Court's commercial speech jurisprudence, discussed *supra*. Peti-

tioners are unsure of what kind of advertisements might be made concerning the tax laws, but they *are* sure that none of the materials they distribute contain any such advertisements. Of course, as this Court recognized in *Schmidt*, *supra*, fairness, as well as Rule 65(d), prohibit forcing Petitioners to guess at what it must refrain from doing.

Likewise, Petitioners have no subjective standard by which to determine what speech, if any, is "likely to aid or abet violations of the tax laws." If the Court found that some such speech exists (which should be a necessary condition of including it in the injunction), then Rule 65(d) mandates that it be identified with particularity.

As noted *supra*, the distinction between banning speech through legislative enactment and through judicial fiat is blurring. Unlike Petitioners, none of the defendants of the actions under § 6700 in the federal courts appear to have challenged whether the IRC provides the necessary subject matter jurisdiction for prohibiting the advocacy — including the right to petition, association and speech — of opinions which dissent from the majority of courts on issues of tax law.

Petitioners raised this issue for the first time in the Circuit Court, but that Court failed to address it, having affirmed solely on the reasons given by the District Court — before whom the issues related to subject matter jurisdiction were never raised.

There is no question that this Court has upheld laws restricting false commercial speech in many

instances, yet a recognition of the authority of legislatures to restrict such speech does not give *carte blanche* to the executive or judicial branches to do the same, as has been the recent experience in the Circuits. In the present case, the government has not cited any statute, regulation or ordinance which is claimed to prohibit the commercial speech "relating to" products and services. Instead, it has banned the speech of Petitioners by merely asserting that it is allowed to do so.

This highlights the second reason given in *Schmidt*, *supra* for the specificity requirement of Rule 65(d) — because without it, an "informed and intelligent appellate review is greatly complicated, if not made impossible."

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

Supreme Court, U.S.
FILED
071145 JAN 2 - 2008
OFFICE OF THE CLERK

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No.

IN THE
Supreme Court of the United States

SAVE-A-PATRIOT FELLOWSHIP
AND JOHN B. KOTMAIR, JR.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 07-1156

UNITED STATES of America,
Plaintiff-Appellee,

v.

John B. KOTMAIR, Jr., d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee; Save-A-Patriot Fellowship, an unincorporated association,
Defendants-Appellants.

Filed: October 1, 2007.

On Petition for Rehearing En Banc

The appellants' petitions for rehearing en banc were submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petitions for rehearing en banc are denied.

Entered for a panel composed of Judge Wilkinson, Judge Traxler, and Judge Duncan.

For the Court,
/s/Patricia S. Connor
Clerk

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 07-1156

UNITED STATES of America,
Plaintiff-Appellee,

v.

John B. KOTMAIR, Jr., d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee; Save-A-Patriot Fellowship, an unincorporated association,
Defendants-Appellants.

Submitted: July 24, 2007.
Decided: July 26, 2007.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, Senior District Judge. (1:05-cv-01297-WMN).

Before WILKINSON, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished PER CURIAM opinion.

PER CURIAM:
John B. Kotmair, Jr., and Save-A-Patriot Fellowship appeal from the district court's orders granting summary judgment in favor of the United States and issuing a permanent injunction against them based on their activities in promoting a tax evasion scheme, and denying their motions for a new trial

and for modification of the injunction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Kotmair, No. 1:05-cv-01297-WMN (D.Md. Nov. 29, 2006; Feb. 7, 2007). We deny Save-A-Patriot's motion to strike portions of the brief filed by the United States, and we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES of America

v.

John Baptist KOTMAIR et al.

No. WMN-05-1297.

Nov. 29, 2006.

MEMORANDUM

WILLIAM M. NICKERSON, Senior United States District Judge.

Before the Court are cross motions for summary judgment filed by Defendant Kotmair, Paper No. 36; by Defendant Save-a-Patriot Fellowship (SAPF), Paper No. 38; and by the government. Paper No. 42.[1] Upon review of the pleadings and the applicable case law, the Court determines that no hearing is necessary and that Defendants' motions for summary judgment will be denied, and the government's motion for summary judgment will be granted.

I. BACKGROUND

Defendant John B. Kotmair is a seasoned tax protester who has long espoused what has come to be known as the "Section 861" or "U.S. Sources" argu-

[1] In addition, there are several discovery-related or procedural motions pending. Paper Nos. 34, 35, 39, 64.

ment. By adopting a twisted reading of selected portions of Internal Revenue Code (IRC), proponents of this argument assert, in simplest terms, that U.S. citizens need not pay any taxes on income earned within the 50 states.[2] In 1984, 31 days after being released from a two-year term of imprisonment for failure to file income tax returns,[3] Kotmair founded Defendant Save-a-Patriot Fellowship (SAPF). Kotmair describes himself as the "Fiduciary of [SAPF's] day-to-day functions." Kotmair Aff. ¶ 3.

Kotmair represents that SAPF operates on the basis of membership fees and "donations." See *id.* ¶ 8. In addition, through its website, www.save-a-patriot.org, and other publications, SAPF informs its members of various products and services that it offers for sale. SAPF represents that these products and services, if used as SAPF instructs, will enable members to legally stop paying income tax on their "U.S.-source income." For example, SAPF sells to its members a document called an "Affidavit of Revocation and Rescission" which Defendants claim can be used to revoke the members' original applications for Social Security numbers. *Id.* ¶ 7. As a result of this "revocation," according to Defendants, the individual is no longer obligated to file income tax returns or to have taxes or Social Security contributions withheld from his or her earnings. SAPF also provides upon payment of an established fee a "Statement of Citizenship" which members are in-

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[2] See *United States v. Bell*, 238 F.Supp.2d 696, 699 (M.D. Pa .2003), for a more detailed explanation of the Section 861 argument.

[3] See *Kotmair v. Commissioner of Internal Revenue*, 86 T.C. 1253 (1986).

structed to give their employers to persuade those employers to stop withholding taxes from the SAPF member's wages.

SAPF members' assertion of these arguments and positions is met with a predictable response from the Internal Revenue Service (IRS). When the IRS sends notices to SAPF members exposing the frivolousness of the "U.S.-Sources" argument and requesting that they file properly completed income tax returns, SAPF (upon payment by its members of additional fees) submits to the IRS on behalf of its members a number of different formletter responses. See *id.* ¶¶ 24-28, 30, 32 (in responding to Revenue Agent Rowe's descriptions of the various letters SAPF has submitted to the IRS, Kotmair, without denying SAPF sends the letters, simply affirms that "[t]he documents in question contain true statements from the law"). These letters are generally signed by Kotmair as the "power-of-attorney" for the SAPF member. See Pl.'s Ex. 9 (redacted protest letter with attached power-of-attorney); Kotmair Aff. ¶ 33 (acknowledging that power-of-attorney documents are executed when members request that SAPF staff respond to the IRS on their behalf). In addition to these numerous formletters, SAPF offers to prepare and file customized pleadings for its members advancing the U.S.-Sources argument, again, in exchange for the payment of additional fees. See Pl.'s Ex. 1A/1B, Save-A-Patriot Fellowship Member Handbook 17 (hereinafter "Handbook") (explaining that SAPF's "[p]aralegal work (court complaints/briefs, motions etc.) is considerably more cost intensive than power-of attorney work (case development including correspondence to the IRS)" and can be as much as ten times

more expensive).

In its Complaint, the government also alleges that SAPF offers an "insurance-like" program that furnishes a financial incentive for its members to violate federal tax law. See Compl. ¶¶ 11-15. SAPF's "Member Handbook" explains that "[t]he Fellowship operates much like an insurance company in that members pledge under our Member Assistance Program (MAP) to reimburse other members should they suffer a loss of cash or property as a result of illegal IRS collection practices and confiscation." Handbook 4. Elsewhere, the Handbook outlines the losses covered under this program, either from criminal prosecutions or civil actions initiated by the IRS, and emphasizes that, to obtain these benefits, the "Member must prove they used every Court proceeding and delay tactic possible." *Id.* at 28.[4]

The government asserts that Defendants' activities are violative of IRC §§ 6700 and 6701 and filed this action pursuant to IRC § 7408 to obtain a permanent injunction prohibiting Defendants from continuing these activities. In addition, the government is asking that the Court order Defendants pursuant to IRC § 7402: to furnish it with the identities of its members and those who have purchased its prod-

[4] In its motion for summary judgment, SAPF argues strenuously that "[i]t is beyond reason and logic that [these insurance-like programs] could be construed to encourage anyone to commit a crime." Defs.' Mot. for Summ. J. 33. In its Handbook, however, SAPF compares the program to winning the lottery, except, "unlike the lottery, [the convicted SAPF member] won't have to wait 20 years." Handbook 6. SAPF opines that because of this financial windfall, "[s]ome members may even wish for multiple sentences." *Id.*

ucts and services and to notify those customers of the Court's ruling in this matter; to remove the false and fraudulent information from its website; and to post a copy of this Court's injunction on that website.

The government has filed a motion for summary judgment arguing that the undisputed evidence establishes that Defendants are violating the IRC and will not stop that illegal activity unless enjoined by this Court. Defendant SAPF has filed an opposition and cross motion, challenging the evidence offered by the government, both as to its adequacy and its admissibility. Defendant SAPF also argues that its activities are protected by the First Amendment. Defendant Kotmair filed a separate motion arguing that he in not a proper party in this action.

II. SUMMARY JUDGMENT MOTIONS

A. Legal Standard for Summary Judgment

A moving party is entitled to summary judgment only upon showing that there exists no genuine issue as to any material fact, and it is entitled to judgment as a matter of law. See Fed.R.Civ.P. 56(c); Blue Ridge Ins. Co. v. Puig, 64 F.Supp.2d 514 (D. Md.1999) (citing, inter alia, Celotex Corp. v. Catrett, 477 U .S. 317, 322 (1986)).

"Where ... both parties have moved for summary judgment, it does not establish that there is no issue of fact and require that summary judgment be granted to one side or another." World-Wide Rights Ltd. P'ship v. Combe, Inc., 955 F.2d 242, 244 (4th Cir. 1992) (citation and internal quotation marks

omitted). When both parties file motions for summary judgment, the court applies the same standards of review. Taft Broadcasting Co. v. United States, 929 F.2d 240, 248 (6th Cir.1991); ITCO Corp. v. Michelin Tire Corp., 722 F.2d 42, 45 n. 3 (4th Cir.1983) ("The court is not permitted to resolve genuine issues of material facts on a motion for summary judgment-even where ... both parties have filed cross motions for summary judgment.") (emphasis omitted). The role of the court is to "rule on each party's motion on an individual and separate basis, determining, in each case, whether a judgment may be entered in accordance with the Rule 56 standard." Towne Mgmt. Corp. v. Hartford Acc. & Indem. Co., 627 F.Supp. 170, 172 (D. Md.1985) (quoting Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2720).

B. Entitlement to Injunction

As a preliminary matter, the Court must briefly address two arguments made by Defendants related to the adequacy of the allegations in the Complaint. On the one hand, Defendants assert that the Complaint is overbroad and that some of the allegations in the Complaint relate to activities over which Defendants have no control or which have no relevance to the government's claims. For example, the Complaint references representation made on two websites which are not owned or operated by Defendants. See Compl. ¶¶ 8, 23, 24 (referencing websites "www.taxfreedom101.com" and "www.taxtruth4u.com" and representations made on those websites). The government now concedes that Defendants do not control these websites. Obviously, therefore, any injunction issued by this Court cannot require any

action by Defendants relative to those websites. The Complaint also contains allegations concerning "frivolous" Freedom of Information Act (FOIA) requests and bankruptcy petitions that SAPF has filed on behalf of its members. *Id.* ¶ 23, 24. It is questionable whether any injunction issued under §§ 7402 or 7408 would reach that conduct.

On the other hand, Defendants protest that allegations necessary to support the government's claims were omitted from the Complaint, but evidence supporting those omitted allegations was submitted with the government's motion. For example, Defendants note that the "Statement of Citizenship" was never mentioned in the Complaint. SAPF's Opp. to P.'s Mot. for Summ. J. 19. They acknowledge elsewhere, however, that the Complaint does state that "defendants prepare documents for members that they claim will prevent the member's employer from withholding federal taxes from the member's wages," and that this allegation, "[c]onstrued as liberally as possible, ... may be an allusion to the 'Statement of Citizenship.' " *Id.* 20-21. With these quibbling criticisms of the Complaint, Defendants are placing a pleading burden on the government far beyond the liberal pleading standards of Rule 8 of the Federal Rules of Civil Procedure, or even the more stringent standards of Rule 9.

Turning to the merits of the government's claims, it is abundantly clear from the record that Defendants' conduct is in violation of both §§ 6700 and 6701 of the IRC, and that injunctive relief is appropriate and necessary under both § 7408 and § 7402.

Section 7408(a) of the IRC provides that the United States may commence an action in a district court to enjoin any person from engaging in conduct subject to penalty under §§ 6700 and 6701. A district court has authority to grant such relief, if it finds:

(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct[.]

IRC § 7408(b). Since § 7408 expressly provides for an injunction, the traditional guidelines for equitable relief do not have to be established for an injunc-

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[5] Section 6700 makes subject to its penalties:

[a]ny person who-

(1)(A) organizes (or assists in the organization of)-

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)-

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter.

tion to issue. *United States v. Buttorff*, 761 F.2d 1056, 1059 (5th Cir.1985) ("When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose."). The government bears the burden, however, of proving each element necessary for the issuance of an injunction by a preponderance of the evidence. *United States v. Estate Preservation Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000). To prove a violation of § 6700 that would then warrant the issuance of an injunction under § 7408, the government must show that:

(1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement;
(2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;
(3) they knew or had reason to know that the statements were false or fraudulent;
(4) the false or fraudulent statements pertained to a material matter; and
(5) an injunction is necessary to prevent recurrence of this conduct.

Estate Preservation, 202 F.3d at 1098.[5]

Defendants' primary argument that they are not in violation of § 6700 is that its provisions were "never intended to apply to false statements generally, nor even to all false statements with respect to the allowability of any deduction or credit, or the excludability of any income." Defs' Mot. for Summ. J. 18. Instead, Defendants contend, "[i]t only applies

to false statements with respect to the availability of any of these tax benefits by reason of participation in the shelter." *Id.* (emphasis in original). Because, under Defendants' interpretation of the tax laws, no income tax can be properly assessed against anyone for U.S.-source income, no exclusive tax benefit is promised to SAPF members by virtue of their membership or participation in SAPF. *See id.* 19.

Courts have universally rejected Defendants' narrow reading of § 6700 and have found tax schemes very similar to Defendants' to fall within the reach of that statute. For example, in *United States v. Raymond*, 228 F.3d 804 (7th Cir. 2000), the defendants promoted the view that the federal income tax is unconstitutional and that persons who are not federal employees or residents of the District of Columbia are not legally required to pay federal income tax. Like Defendants in the case at bar, the Raymond defendants made available for sale forms and instructions to guide individuals through the process of "withdrawing" from the jurisdiction of the federal government's taxing authorities and the social security system so that the individual would, under the defendants' view of the Tax Code, no longer be required to pay federal taxes. 228 F.3d at 806. In concluding that the defendants' activities were in violation of § 6700, the Seventh Circuit held that "the definition of a tax shelter in § 6700 is 'clearly broad enough to include a tax protester group.' " *Id.* at 811 (quoting *United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir.1987)). See also *United States v. Cohen*, Civ. No. 04-332, 2005 WL 1491978, (W.D.Wash.2005) (stating that "a defendant need

not be operating a traditional investment tax shelter to run afoul of § 6700, but that the organization or participation in a tax protester scheme or group, which is based on false or fraudulent conceptions of the U.S. Tax Code, will suffice"); *Abdo v. United States*, 234 F.Supp.2d 553, 562 (M.D.N.C. 2002) (noting that "the Senate Finance Committee's Report concerning the statute confirms that Congress designed Section 6700 as a 'penalty provision specifically directed towards promoters of abusive tax shelters and other abusive tax avoidance schemes' ") (quoting S.Rep. No. 97-494, 97th Cong., 2d Sess. 266, reprinted in 1982 U.S.C.C.A.N. 781, 1014) (emphasis added in *Abdo*).

Defendants provide no authority to the contrary and, in fact, readily concede that "courts have included all sorts of abusive tax reduction schemes within [§ 6700's] broad sweep." SAPF's Opp. to Pl.'s Mot. for Summ. J. 28. In Defendants' view, however, "just because courts have followed that course of conduct does not make it valid." *Id.* 28 n. 67. While Defendants stubbornly choose to ignore the reasoning of numerous courts, this Court finds that reasoning compelling. Section 6700 mandates penalties on any person who "organizes ... (ii) any investment plan or arrangement, or (iii) any other plan or arrangement," and furnishes a statement known to be false with respect to the excludability

[6] In addition to these falsehoods about the tax laws, Defendants also misrepresent Kotmair's authority to represent others before the IRS. Although Kotmair continues to obtain "power-of-attorney" documents from SAPF customers and files papers with the IRS on others' behalf, he admits that has received notice from the IRS on several occasions, as early as 1993, that his representation number has been revoked and

of income by reason of participating in the plan or arrangement. IRC § 6700((a)(1)(A) (emphasis added). While Defendants may argue that the tax benefits it promotes are potentially available to any American citizen, implicit in SAPF's sale of its forms, letters, and "paralegal" services is the representation that only those that follow SAPF's plan will be able to reap those benefits. SAPF certainly touts the advantages to its members of employing SAPF's services. See, e.g., Handbook 21 ("But of course, whether or not [the legal restrictions by which SAPF asserts the IRS is bound] prevent the IRS from hurting someone depends entirely upon whether or not the individual in question makes the proper response, protests and/or requests that are necessary to obtain relief.... When we represent you, that is exactly what we do."); see also *id.* 16 (emphasizing that "all response letters to the IRS or affidavits (revocation and rescission, constructive notice, indemnity, etc.) are exclusive to the membership").

As to the next three elements of a § 7600 violation, it is equally clear that Defendants' statements about the legality of their efforts on members' behalf were false, pertained to material matters, and that Defendants knew, or had reason to know, they were false. To encourage individuals to join its "Fellowship," and make use of its products and serv-

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that he is no longer eligible to practice before the Internal Revenue Service. Kotmair Aff. ¶¶ 34-37. While he acknowledges that he has been told that he cannot continue to represent others, he denies the effect of the revocation on "due process" grounds. *Id.* ¶ 35-37. This is yet another example of Defendants simply insisting that the law is what they say it is, regardless of compelling authority to the contrary.

ices, SAPF represented, inter alia: that taxable income is limited to "income that has been 'earned' while living and working in certain 'foreign' countries or in the U.S. possessions and territories;" that there is no requirement for most Americans to file tax returns or have taxes withheld from their wages; and that one can "quit" the Social Security program. Handbook 10-11. As noted above, Defendants readily acknowledge that courts have consistently rejected the truth of each of these propositions. As a self-professed tax expert and one who has studied "the relevant court cases and the law," Handbook 16, Defendant Kotmair has long been well aware of those holdings. Again, Defendants do not deny that courts have interpreted the Internal Revenue Code in a manner that is diametrically opposed to their own, they simply choose to reject and ignore those holdings. See SAPF Opp. to P.'s Mot. for Summ. J. 33 ("The problem with [the government's] legal theory is that it attempts to equate knowing that a statement is false with knowing that courts have said that it is false.").[6]

The legislative history of § 7600 indicates that the "knows or has reason to know" standard "includes what a reasonable person in the [defendant's] ... subjective position would have discovered." *Estate Preservation Services*, 202 F.3d at 1103. This standard "allow[s] imputation of knowledge so long as it is commensurate with the level of comprehension required by the speaker's role in the transaction." *Id.* (citations and internal quotations omitted). Here, Defendants unquestionably meet that standard.

The final element to be considered before an in-

junction can issue under §§ 6700 and 7800 is whether an injunction is necessary to prevent recurrence of the offending conduct. In making that determination, courts consider such factors as: "the gravity of harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations." *Kaun*, 827 F.2d at 1149-1150. Each of these factors favor the issuance of an injunction.

Defendants boast that their operation "has grown into a complex containing a print shop, copy room, paralegal room, casework area, advanced 30 gigabyte video production studio, book shop, 150 person meeting room with stage, sound and video cameras and a complete law library, both on disk, hard copy and computer access to West Law," and speak of SAPF's enrollment as "exploding" with a goal of 100,000 members. Handbook 16, 6. Although Defendants challenge the government's estimate as to exactly how much it costs the IRS to respond to Defendants' frivolous filings, they do not dispute the governments' representation that Defendants have mailed over 800 protest letters to the IRS just during the course of this litigation. Decl. of Joan Rowe ¶ 41. Apart from the costs of dealing with these pro-

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[7] SAPF elaborates, "[i]t is the sad experience of Defendant that, in its 22 years of existence, letters Defendant sends to the IRS are not responded to substantively, much less considered in determining members' correct tax situation." *Id.* 25-26.

test letters is the matter of unpaid or underpaid income taxes by SAPF adherents. Finally, Defendants have shown no inclination, whatsoever, to cease their activities despite their position being repeatedly rebuffed by the courts.

To establish a violation of § 6701 warranting an injunction under § 7408, the government must prove: (1) the defendant prepares, assists in, procures, or advises the preparation of any portion of a return, affidavit, claim, or other document; (2) the defendant knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; (3) the defendant knows that such portion (if so used) would result in an understatement of the liability for tax of another person; and (4) an injunction is necessary to prevent a recurrence of this conduct. IRC §§ 6701, 7408.

Defendants readily concede that SAPF prepares correspondence for its members that it knows will be used (and in fact, has been used) in connection with matters material to the internal revenue laws. SAPF's Mot. for Summ. J. 22. In what is perhaps Defendants' second most preposterous argument in their pleadings, SAPF argues that its filings on its members' behalf do not result in understatements of liability. Defendants "reason" that to result in an understatement of liability, "a presentation containing actual numbers must be made with respect to statements of liability." *Id.* at 24. Because SAPF's correspondence on behalf of its members "contains no amounts, but employs mere words-citations of the law, citations of court cases, and declarations of beliefs," SAPF contends that "it is absurd" to con-

sider that its services run afoul of § 6701. *Id.* 24-25.

It is, of course, Defendants' argument that is absurd. The whole thrust of Defendants' U.S.-sources scheme is that individuals whose income would otherwise be taxable can escape their tax liability completely. Whether Defendants' customers achieve this result by filing a return indicating zero income and zero liability, or simply refuse to file a return, the result is the same -their tax liability is understated. To argue otherwise is mere sophistry.

Defendants' most preposterous argument, however, is that, because "the evidence is overwhelming that the IRS never relies upon letters written by Defendant," those letters cannot result in an understatement of liability for tax. SAPF's Mot. for Summ. J. 25.[7] Requiring the IRS to adopt or embrace a defendant's fraudulent position before that defendant could be found in violation of § 6701, however, turns the statute on its head. The statute penalizes the understatement of liability and SAPF assists its customers making those understatements. There is no additional requirement under the statute that an individual ultimately prevail in avoiding his or her rightful liability. Were that a requirement, no one could ever be penalized under the statute.

The Court concludes that the government is entitled to an injunction under § 7408 as it is necessary to prevent ongoing violations of both § 6700 and 6701.

The Court also concludes that the government is entitled to an injunction under § 7402. Section 7402

of the IRC can provide an additional or alternative basis for a district court to issue "writs and orders of injunction ... and such other orders and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws." IRC § 7402(a). Injunctive relief under § 7402 is "in addition to and not exclusive of any and all other remedies." *Id.* This section has been employed "to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir.1984). Courts have held that "the language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws," and "the statute has been relied upon to enjoin activities of third parties that encourage taxpayers to make fraudulent claims." *Id.* The specific relief that the government seeks under § 7402 is an order requiring Defendants: (1) to furnish the government with the identities of those persons who have purchased Defendants' tax materials and to notify those customers of the Court's ruling in this matter; (2) to remove false and fraudulent tax promotional materials from their websites; and (3) to post a copy of this Court's injunction on SAPF's website.

Unlike an injunction under § 7408, before an injunction can issue under § 7402, the government must establish the presence of the traditional equi-

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[8] The Third Circuit acknowledged that there was a disagreement among the courts as to the forms of expression that can be protected under *Brandenburg*, and also noted that it was questionable whether Bell's website met *Brandenburg*'s "imminence" requirement. 414 F.3d at 482 n. 8, 483 n. 9.

table factors for the issuance of an injunction. *Id.* at 301. "Those factors are: (1) the likelihood of continuing irreparable injury to the United States, (2) the harm to the defendant, (3) success on the merits of the case, and (4) the public interest." *United States v. Hansen*, Civ. No. 05-0921, 2006 WL 2354820 (S. D. Cal. June 1, 2006). Here, those factors are easily met.

As noted above, the government is sustaining irreparable harm in the form of the expenditures of time and money to respond to Defendants' frivolous filings as well as the lost revenue from SAPF customers who either fail to file returns or file returns understating their tax liability. In contrast, Defendants will not sustain any irreparable harm by being required to obey the law. *Hansen*, 2006 WL 2354820 at *9; *United States v. Lloyd*, Civ. No. 04-274, 2005 WL 3307281 at *8 (M.D.N.C. Dec. 6, 2005). As to the merits of the government's case, it is without question that Defendants are violating the tax laws and interfering with the administration of those laws. Finally, the public has a compel-

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[9] The Court is cognizant that there may be portions of the website and other materials that neither constitute false commercial speech nor aid and abet others to violate the tax laws. Under the injunction, Defendants can express their opinions about the tax laws as long as those opinions are not used to sell products or services or instruct others as to how to impede the collection of taxes. See *Schiff*, 379 F.3d at 629 (noting that under the injunction issued, "Schiff can relate his long history with the IRS and explain his unorthodox tax theories without simultaneously urging his readers to buy his products"); *United States v. Bell*, 414 F .3d at 480 (observing that "an appropriately drafted injunction in this case would curtail Bell's promotion of tax evasion but would not prevent him from advocating against the tax laws generally").

ling interest in prohibiting the promotion and sale of products that aid some in avoiding lawful income taxes.

C. Scope of Injunction

In considering the scope of the injunctive relief to be granted, the Court must consider various constitutional challenges raised by Defendants. As with Defendants' other arguments and defenses, each of these challenges have been rejected by courts that have issued or affirmed injunctions against other tax protesters similar to that requested here.

1. Enjoined Commercial Speech

Defendants contend that the statements on SAPF's website and in its other publications constitute speech protected by the First Amendment and, therefore, cannot be enjoined. Because much of the speech, however, relates to the sale of SAPF products and services, it is commercial speech and it is well established that commercial speech, if fraudulent, can be enjoined. *Schiff*, 379 F.3d at 630; *Estate Preservation*, 202 F.3d at 1106. Because Defendants' representations about the tax laws and the efficacy of their products is clearly fraudulent, that speech can be enjoined without running afoul of the First Amendment. See *Estate Preservation*, 202 F.3d at 1106 (collecting cases enjoining similar conduct).

Just last year, the Third Circuit affirmed the issuance of an injunction against one of Kotmair's former employees, Thurston Bell, who owned and operated a rival website promoting the U.S. Sources argument. *United States v. Bell*, 414 F.3d 474 (3rd

Cir. 2005). Because, like Defendants in the instant action, Bell used his website to entice the reader to pay to join his organization and to purchase advice and other products, the district court found that Bell was engaging in commercial speech. *United States v. Bell*, 238 F.Supp.2d 696, 703 (M.D.Pa. 2005). The district court concluded that this commercial speech could be lawfully enjoined. To the extent that there was non-commercial content on the website, the district court held that this content could be banned "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Id.* at 704 (emphasis in original) (quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)).

While affirming the issuance of the injunction, the Third Circuit slightly modified its language. Noting that *Brandenburg* might be "the wrong tool for tailoring the injunction," *Bell*, 414 F.3d at 483,[8] the court concluded that the injunction would avoid raising constitutional questions "if it were written to ban false commercial speech and aiding and abetting violations of the tax laws rather than Brandenburg's incitement." *Id.* at 484 (emphasis added). The court then held that the language of the injunction would be construed so that "Bell may only be found in contempt for violating the order where the evidence demonstrates that he advertised, marketed or sold false tax advice, or aided and abetted others, directly or indirectly, to violate tax laws." *Id.* This Court will adopt similar language.[9]

2. Provision of Customer Lists

The government has requested that the Court or-

der Defendants t produce to the government the name, social security number, and contact information for all SAPF members and those that have purchased Defendants' products and services. Although the government knows the identity of many of these individuals, it argues that this information is needed because of the possibility that many do not file tax returns. The Court concludes that the production of the customer lists is an appropriate means to alleviate some of the harm caused by Defendants' conduct and to mitigate further harm. See *Hansen*, 2006 WL 2354820 at *10 (ordering the plaintiff to disclose the "identities of any individuals who have purchased [d]efendant's abusive tax programs, and to notify those customers of [the c]ourt's ruling'); *United States v. Hill*, Civ. No. 05-877, 2005 WL 3536118 (D.Ariz. Dec. 22, 2005) (ordering the defendants to disclose names of all those for whom defendants filed returns).

3. Posting Injunction on Website and Customer Notification

Finally, the government requests the Court to order Defendants to post a copy of the permanent injunction on the first page of its website, and to maintain that website, with the posted injunction, for one year. The government would also have Defendants notify, at their expense, all SAPF members and all individuals who have purchased Defendants' products and services of the issuance of the permanent injunction and to provide them with a copy of the injunction. Although this would constitute "forced speech," courts have held that "mandated disclosure of factual commercial infor-

mation does not offend the First Amendment. *Schiff*, 379 F.3d at 631. In equating the sale of fraudulent tax scheme with the sale of a defective product, the Ninth Circuit observed, "[b]ecause the defendants are selling a product that, if used, could expose their customers to criminal liability for tax evasion, the government does not offend the First Amendment when it requires the defendants to post a preliminary injunction on the websites where the product is sold, warning potential customers of the hazards of the product." *Id.*

B. Estoppel of Claims against Kotmair

Defendant Kotmair has filed a separate motion arguing that Plaintiff is estopped from seeking an injunction against him based upon a finding of this Court in a prior action against these same parties, *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D.Md.1996). In the instant complaint, Kotmair is identified in the introduction and in paragraph 4 as "doing business as Save-A-Patriot Fellowship and National Workers Rights Committee." Kotmair contends that this identification is inconsistent with this Court's conclusion in that previous decision that SAPF "is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through persons in addition to Kotmair." Save-A-Patriot Fellowship, 962 F.Supp. at 699. Because of that inconsistency, Kotmair contends in his motion for summary judgment that he is not a proper party in this suit.

The Court agrees that identifying Kotmair as "doing business as SAPF" was perhaps unartful. It

does not, however, mandate dismissal of Kotmair. In fact, Kotmair's reference to the previous decision of this Court highlights the need to enjoin his activities in addition to those of SAPF. The Court will enjoin Kotmairs' actions as well as those of SAPF.

III. OTHER PENDING MOTIONS

Also pending are a variety of discovery related motions. While these motions are largely mooted by the Court's resolution of the summary judgment motions, they warrant a brief discussion.

On May 16, 2006, Magistrate Judge James Bredar issued a ruling on a motion to compel filed by the government. In that ruling, Judge Bredar ordered Defendants, inter alia, to turn over to the government SAPF's customer lists. Defendants filed an objection to this ruling, Paper No. 34, raising some of the same arguments raised in their briefing of the summary judgment motions. Defendants also filed a motion to stay enforcement of Judge Bredar's order pending resolution of their objection. Paper No. 35. In response to Defendants' specific failure to comply with Judge Bredar's order and more general failure to cooperate in discovery, the Government filed a motion for sanctions requesting that certain facts be deemed admitted by Defendants. Paper No. 39. Finally, Defendants filed a motion to strike certain evidence submitted by the government with its summary judgment reply memorandum on the ground that the government should have submitted this evidence with its summary judgment motion. Paper No. 64. This motion is related to other discovery motions in that the government, in opposing the motion to strike, asserts that Defendants' failure to

cooperate in discovery and produce these documents is part of the reason the evidence was not submitted previously.

The Court will overrule Defendants' objections to Judge Bredar's May 16, 2006, order and will deny the remaining motions as moot. The undersigned finds no error in Judge Bredar's ruling. Regardless, most if not all of the discovery he ordered Defendants to produce must now be produced pursuant to the permanent injunction issued with this memorandum. As to the government's motion for sanctions, the Court has now found as fact those elements that the government sought to be deemed admitted. Finally, the Court agrees that had Defendants cooperated in the discovery process, the government would have been able to submit with its motion for summary judgment much of the material it submitted with its reply. In addition, because the evidence against Defendants is so overwhelming, with much of it coming from Defendants' own documents and testimony, the additional evidence submitted with the reply does little more than gild the lily.

IV. CONCLUSION

For these reasons, the Court finds that the government is entitled to summary judgment. Two separate orders will issue with this memorandum, one summarizing the resolution of the pending motions, and the other, an Order of Permanent Injunction, setting forth the actions to be taken by Defendants and the conduct to be restricted.

D.Md.,2006.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES of America

v.

John Baptist KOTMAIR et al.

No. WMN-05-1297.

Filed: Nov. 29, 2006.

PERMANENT INJUNCTION ORDER

This Court has found that Defendants John Baptist Kotmair and Save-A-Patriot Fellowship have engaged in conduct subject to penalty under IRC §§ 6700 and 6701 in connection with their fraudulent promotion of the "U.S.-Sources" or "Section 861" argument. This argument has no basis in law and has been consistently rejected by the courts. This Court has further found that Defendants have engaged in conduct that interfered with the enforcement of the internal revenue laws and, absent an order restraining their activity, Defendants will continue said interference and conduct in violation of the Internal Revenue Code. Accordingly and pursuant to IRC § 7402 and 7408, IT IS this 29th day of November, 2006, by the United States District Court for the District of Maryland, ORDERED:

1) That Defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them are hereby permanently enjoined from directly or

indirectly:

a) Engaging in activity subject to penalty under IRC § 6700, including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false and fraudulent as to any material matter;

b) Engaging in activity subject to penalty under § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;

c) Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

d) Engaging in any other activity subject to penalty under IRC §§ 6700 or 6701 or other penalty provision of the Internal Revenue Code;

e) Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any person;

f) Preparing or assisting in the preparation of court filings related to the assessment or collection of income taxes on behalf of any other person;

g) Obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS

proceedings;

h) Advising anyone that they are not required to file federal tax returns or pay federal taxes;

i) Instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages;

j) Providing aid or assistance, financial or otherwise, either directly or through the Member Assistance Program, the Victory Express, the Patriot Defense Fund, or any other plan or arrangement, for others to violate the internal revenue laws;

k) Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to aid or abet others in violating the internal revenue code;

l) Organizing or selling any document purporting to enable the customer to discontinue payment of federal tax;

m) Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

2) That Defendants, at their own expense, shall notify all SAPF members (both associate and full members) and all individuals who have purchased defendants' tax plans, arrangements, materials and services of the entry of this permanent injunction against Defendants and shall provide them with a copy of this permanent injunction;

3) That Defendants shall produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members (both associate and full members) and all persons and entities who have purchased Defendants' tax-fraud plans, arrangements, services, products or materials;

4) That Defendants shall remove from their website, www.save-a-patriot.org, and any other website over which they have control all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to aid or abet others in violating the internal revenue laws;

5) That Defendants shall display prominently on the first page of their website, www.save-a-patriot.org, and any other website over which they have control a complete copy of this permanent injunction, and will maintain those websites for one year with a complete copy of this permanent injunction so displayed throughout that time;

6) That Defendants shall complete the requirements of paragraphs 2 through 5, supra, within 21 days of the date of this Order and shall file a certification of compliance with those requirements, under penalty of perjury, within 22 days of the date of this Order;

7) That the United States shall be permitted to conduct post-judgment discovery to ensure and verify Defendants' compliance with the terms of this permanent injunction; and

8) That the Clerk of Court shall transmit copies of this Permanent Injunctive Order to all counsel of record.

/s/ William M. Nickerson
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES of America

v.

John Baptist KOTMAIR et al.

No. WMN-05-1297.

Filed: Feb. 7, 2007.

ORDER

On November 29, 2006, this Court entered an order granting Plaintiff summary judgment. On that same date, the Court also entered a permanent injunction order requiring Defendants to refrain from certain activities that interfere with the enforcement of the internal revenue laws. Now pending before this Court are Defendants' motion for a new trial, Paper No. 71, and motion for modification of the permanent injunction order, Paper No. 72. On December 14, 2006, this Court stayed the application and enforcement of the permanent injunction order pending the resolution of these two motions.

As to the motion for a new trial, the Court finds that it essentially raises and reargues the same meritless arguments presented in the cross motions for summary judgment. Therefore, it will be denied.

As to the motion for modification, the Court notes that the injunction issued by this Court is similar to that of injunctions issued and upheld by other

courts against others touting similar fanciful views of the federal tax laws. See *United States v. Bell*, 414 F.3d 474 (3rd Cir. 2005); *United States v. Schiff*, 379 f.3d 621 (9th Cir. 2004); *United States v. Estate Preservation Services*, 202 F.3d 1093 (9th Cir. 2000). To the extent that Defendants claim that they are unable to comply with the requirement that they turn over the records of those that have purchased their products because they have no such records, that is an issue for post-judgment discovery related to Defendants' compliance with the injunction, not for modification of the injunction itself. The motion will be denied.[1]

Accordingly, it is this 7th day of February, 2007, by the United States District Court for the District of Maryland, ORDERED:

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[1] The Court had considered the possibility of holding a hearing on the motion for modification based on Defendants' professed difficulty in understanding the scope of the conduct that was to be enjoined. See Order of Dec. 14, 2006, granting stay at 2. Upon further reflection, however, the Court determines that such a hearing would be pointless as Defendants' confusion is self-induced. Sprinkled throughout their pending motions is Defendants' assertion that their representations about the federal tax laws are not fraudulent because Defendants "sincerely believe" that his view is the correct one, despite the consistent rejection of that view by the courts. See Mot. for New Trial 3 ("the positions espoused by Defendants represent their sincerely held beliefs with respect to the meaning, applicability and operation of the tax laws"); Mot. for Modification 3 ("Defendants sincerely believe that the activities they engage in and the statements they make accurately reflect upon the meaning, applicability and operation of the tax laws"); 4 ("Defendants sincerely believe their activities are not violative of § 6700 and § 6701"). Defendants have previously offered as justification for their continued fraudulent conduct that "just

1) That Defendants' motion for a new trial, Paper No. 71, is DENIED;

2) That Defendants' motion for modification of the permanent injunction order, Paper No. 72, is DENIED;

3) That the stay of this Court's November 29, 2006 injunction is lifted and Defendants shall complete the requirements of paragraphs 2 through 5 of that injunction within 21 days of the date of this Order, and shall file a certificate of compliance with those requirements, under penalty of perjury, within 22 days of the date of this Order; and

4) That the Clerk of Court shall transmit copies of this Permanent Injunctive Order to all counsel of record.

/s/ William M. Nickerson
Senior United States District Judge

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because courts have followed that course of conduct does not make it valid." Save-A-Patriot Fellowship's Opp. to Pl.'s Mot. for Summ. J. 28 n.67. It is doubtful that being told, yet again, that their view of the tax laws is spurious would have any meaningful impact.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES of America

v.

John Baptist KOTMAIR et al.

No. WMN-05-1297.

Filed: Feb. 22, 2007.

ORDER

On November 29, 2006, this Court entered an order granting Plaintiff summary judgment. On that same date, the Court also entered a permanent injunction order requiring Defendants to refrain from certain activities that interfere with the enforcement of the internal revenue laws. In that permanent injunction order, the Court also required Defendants to take certain affirmative actions, including: posting the injunction order on their website, notifying their members of the outcome of this litigation, and providing the government with a listing of the "Save-A-Patriot Fellowship's" membership. The Court temporarily stayed the enforcement of the injunction pending the resolution of Defendants' post-judgment motions. On February 7, 2007, the Court denied those motions and the stay was lifted. Defendants have filed an appeal and have also filed a motion for a stay pending appeal. Paper No. 78.

The Court will grant the motion and stay enforcement of the injunction pending appeal. As the Court

noted when granting the last stay, the potential immediate impact from enforcement of the injunction on Defendants outweighs the harm to Plaintiff occasioned by a brief delay in enforcement. As to the merits of Defendants' appeal, the Court finds no likelihood of Defendants prevailing on the substance of the claims against them. Plaintiff is unquestionably entitled to judgment. As to the precise permissible scope of the injunctive relief, however, the Court finds that there are issues raised that are sufficiently "serious, substantial, difficult and doubtful, as to make them fair ground for litigation," and for that reason, the motion will be granted. See *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189, 195 (4th Cir. 1977) (discussing meaning of "likelihood of success" in the context of preliminary injunctions).

Accordingly, IT IS this 22nd day of February 2007, by the United States District Court for the District of Maryland, ORDERED:

1) That Defendants' Motion for a Stay, Paper No. 78, is GRANTED; and

2) That the Clerk of Court shall mail or transmit copies of this Order to Mr. Kotmair and all counsel of record.

/s/ William M. Nickerson
Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF ILLINOIS
EASTERN DIVISION**

UNITED STATES of America

v.

William J. BENSON

No. 04-cv-7403.

Filed: Dec. 17, 2007.

MEMORANDUM ORDER

SAMUEL DER-YEGHIAYAN, District Judge.

[excerpted] ...

IV. Scope of Injunctive Relief

The Government seeks an injunction providing that Benson and those acting in concert with him are prohibited from: (1) promoting, organizing, or selling the Reliance Defense Package or any other abusive tax shelter plan or arrangement that incites citizens to not pay their taxes, (2) making false statements about the excludability of any income, or the securing of any tax benefit by reason of participating in tax shelters, plans, or arrangements, (3) engaging in any conduct that violates Section 6700, and (4) engaging in conduct that substantially interferes with the proper administration of the internal revenue law. (Mem. Dis. 16). The Government

also requests that the court order Benson to provide the Government with a list of the names and addresses of the customers that purchased the Reliance Defense Package or other versions of the package. (Mem. Dis. 16). In addition, the Government asks the court to order Benson to: (1) send a copy of the injunction to the customers that purchases the Reliance Defense Package or other versions of the Reliance Defense Package, (2) remove all references from Benson's websites referring to the Reliance Defense Package or other versions of the package, (3) post a copy of the injunction on his website, and (4) file an affidavit with the court indicating that he has complied with the terms of the injunction. (Mem. Dis. 16-17).

...

B. Benson's Customer List

The Government seeks as part of its injunctive relief an order requiring Benson to turn over a list of the names and addresses of customers that purchased the Reliance Defense Package or another version of the package. Benson argues that he should not have to turn over the list because it would violate his First Amendment right to association. Benson also argues that to require him to provide the customer list would force him to give up his right to remain silent in violation of his Fifth Amendment rights. However, we need not resolve these constitutional issues since the Government has not shown that the request for the customer list is appropriate injunctive relief in light of the claims and allegations in this case. A significant concern raised by the Government's request is the rights and welfare of the customers of Benson. The sole ba-

sis provided by the Government for its request for the disclosure of the customer list is the need of the Government to ensure that the customers paid their taxes. (Reply 9). The Government indicates that it intends to investigate the customers to make sure that they have properly paid their taxes. (Reply 9). Benson's customers, however, violated no laws simply by purchasing the Reliance Defense Package or related package. Nor can it be assumed that Benson's customers did not pay their taxes merely because they purchased the Reliance Defense Package or related package. The Government itself in arguing that Benson has distributed fraudulent and misleading information to his customers has depicted the customers as victims of Benson. The Government also alleges that the customers were victimized, stating that "Benson's customers have been harmed . . .because his customers have paid him significant sums for worthless advice. . . ." (Compl. Par. 15). The Government has not provided a compelling reason why Benson's customer list should be disclosed and the customers be investigated and scrutinized by the Government solely because they bought the Reliance Defense Package or related package.

The customer list is not related to preventing future misconduct by Benson. The Government is bringing the instant action to prevent Benson from further marketing the Reliance Defense Package and inciting others to disobey the federal tax laws. The Government has made clear that its main concern in bringing this action is to enjoin Benson from future conduct and "end his scheme" since United States taxpayers "will continue to lose money as long as Benson is operating." (Mem. Dis. 14). Ob-

taining Benson's prior customer list would not necessarily facilitate such a goal. Nor should Benson's customers, who the Government itself depicts as victims, be branded as potential co-conspirators with Benson and tax cheats solely because they bought the Reliance Defense Package or related package. Of course, if the Government encounters any customer of Benson who violated tax laws, the Government would be in the right to take action against such individuals. The request by the Government for the customer list is beyond the scope of Benson's wrongdoing in the instant action, and absent a compelling reason given by the Government for its disclosure, the request cannot be granted. The other aspects of the injunctive relief sought by the Government are reasonable and sufficient to deter Benson from continuing his illegal tax scheme. Therefore, based on the above, we grant the Government's motion for summary judgment and grant the request for injunctive relief except for the production of the customer list.

V. Miscellaneous Pending Motions

There are several other miscellaneous outstanding motions in this case filed while the instant motion for summary judgment was pending. The Government has filed a motion for order of immunity. The Government seeks to require Benson to give testimony at a deposition and to provide records concerning his illegal tax advice activities. The Government promises to provide Benson with immunity from prosecution to negate concerns about his right against self-incrimination. The Government states that it intends to depose Benson to identify citizens that could potentially have failed to pay taxes and

to investigate such individuals. However, as indicated above, the information sought by the Government is not appropriate relief in this case. We have granted the Government's motion for summary judgment. Even though we believe that the IRS has every right and responsibility to identify and prosecute those that do not follow the tax laws, continued discovery in this matter, including depositions, after the conclusion of this case would be beyond the scope of these proceedings. Therefore, the motion for an order of immunity is moot.

...

First Amendment
of the Constitution of the United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment
of the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

26 U.S.C. §6700

§6700. Promoting abusive tax shelters, etc.

(a) Imposition of penalty. Any person who --

(1)(A) organizes (or assists in the organization of)--

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)--

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter,

shall pay, with respect to each activity described in paragraph (1), a penalty equal to the $1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. For purposes of the preceding sentence, activities described in paragraph (1)(A) with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1)(B) shall be so treated. Notwithstanding the first sentence, if an activity with respect to

which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

(b) Rules relating to penalty for gross valuation overstatements.--

(1) Gross valuation overstatement defined.--For purposes of this section, the term "gross valuation overstatement" means any statement as to the value of any property or services if--

(A) the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and

(B) the value of such property or services is directly related to the amount of any deduction or credit allowable under chapter 1 to any participant.

(2) Authority to waive. The Secretary may waive all or any part of the penalty provided by subsection (a) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(c) Penalty in addition to other penalties. The penalty imposed by this section shall be in addition to any other penalty provided by law.

26 U.S.C. §6701

§6701. Penalties for aiding and abetting understatement of tax liability

(a) Imposition of penalty. Any person --

(1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

(2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,

shall pay a penalty with respect to each such document in the amount determined under subsection (b).

(b) Amount of penalty.

(1) In general. Except as provided in paragraph (2), the amount of the penalty imposed by subsection (a) shall be $1,000.

(2) Corporations. If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by subsection (a) shall be $10,000.

(3) Only 1 penalty per person per period. If any person is subject to a penalty under subsection (a) with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under subsection (a) with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) Activities of subordinates.

(1) In general. For purposes of subsection (a), the term "procures" includes--

(A) ordering (or otherwise causing) a subordinate to do an act, and

(B) knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) Subordinate. For purposes of paragraph (1), the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) Taxpayer not required to have knowledge. Subsection (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) Certain actions not treated as aid or assistance. For purposes of subsection (a)(1), a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) Penalty in addition to other penalties.--

(1) In general. Except as provided by paragraphs (2) and (3), the penalty imposed by this section shall be in addition to any other penalty provided by law.

(2) Coordination with return preparer penalties. No penalty shall be assessed under subsection (a) or (b) of section 6694 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

(3) Coordination with section 6700. No penalty

shall be assessed under section 6700 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

26 U.S.C. §7402

§7402. Jurisdiction of district courts

(a) To issue orders, processes, and judgments. The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons. If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees.--Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be enti-

tled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

[(d) Repealed. Pub.L. 92-310, Title II, § 230(d), June 6, 1972, 86 Stat. 209]

(e) To quiet title. The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

(f) General jurisdiction. For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

26 U.S.C. §7408

§7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions

(a) Authority to seek injunction. A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

(b) Adjudication and decree. In any action under subsection (a), if the court finds --

(1) that the person has engaged in any specified conduct, and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

(c) Specified conduct. For purposes of this section, the term "specified conduct" means any action, or failure to take action, which is --

(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

(2) in violation of any requirement under regulations issued under section 330 of title 31, United States Code.

(d) Citizens and residents outside the United States. If any citizen or resident of the United States does not reside in, and does not have his principal place of business in, any United States judicial district, such citizen or resident shall be treated for purposes of this section as residing in the District of Columbia.

Rule 65
Federal Rules of Civil Procedure

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating the Hearing with the Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consoli-

date it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry--not to exceed 10 days--that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking prece-

dence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) Motion to Dissolve. On 2 days' notice to the party who obtained the order without notice--or on shorter notice set by the court--the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or

participation with anyone described in Rule 65 (d)(2)(A) or (B).

(e) Other Laws Not Modified. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. § 2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. § 2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) Copyright Impoundment. This rule applies to copyright-impoundment proceedings.